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SUMMARY RECORD OF THE 508th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 January 1999, at 3 p.m.

Chairperson: Miss MASON

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Austria (continued)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Austria (CRC/C/11/Add.14; HRI/CORE/1/Add.8; CRC/C/Q/AUSTRIA/1; written replies of the Government of Austria to the questions raised in the list of issues) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Austria took places at the Committee table.

2. The CHAIRPERSON invited the members of the delegation to continue answering the questions asked at the previous meeting.

3. Mr. CEDE (Austria) said that the establishment of a new monetary order throughout the European Union would stabilize the exchange rate and reduce public spending deficits, to the benefit of all strata of society, including children. Although no particular study had been envisaged which would assess the effects of the euro on children per se, there was no doubt that it would prove beneficial to them.

4. Mr. FILLER (Austria) said that the Austrian Division for International Funds supported a variety of international programmes benefiting children, including one which aimed at reducing child labour, one which provided support to the office of the High Commissioner for Refugees in Kosovo, and one which assisted street children in Romania. A number of new programmes had been established within the context of the International Year for Human Rights, including one which provided assistance to unaccompanied refugee children. He would transmit Mrs. Karp's proposal to the members of that Division, who were deeply interested in programmes to benefit children in developing countries.

5. The CHAIRPERSON, having invited the members of the Committee to ask questions concerning the sections of the list of issues entitled "General principles" and "Civil rights and freedoms", asked Mr. Siedler, the student member of the Austrian delegation, whether Austrian children were aware of the existence of the Convention and to what extent they were able to make use of its principles and provisions on their own behalf.

6. Mr. SIEDLER (Austria) said that most Austrian children were unaware of the Convention and therefore unable to make use of it. That was not, however, a serious problem in the schools, since pupils enjoyed many rights and, although they were not permitted to make decisions, they did contribute to the decision-making process.

7. The CHAIRPERSON said that those children who were aware of the existence of the Convention had the important responsibility of informing other children of their rights. That was particularly so, for instance, in the case of child aliens, children in care, and children in detention.

8. Mr. FULCI asked the student member of the delegation how he had first learned of the Convention, what his own reaction and that of other children

had been and whether learning of the Convention's existence had been a significant event. It would also be useful to know how he had become a member of the delegation.

9. Mrs. KARP, rephrasing a question she had put at the previous meeting, asked how the Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights coexisted in law and practice. In some areas, for instance, the European Convention was more restrictive. In particular, she wished to know whether the Convention on the Rights of the Child, as a United Nations instrument, was accorded a higher status than the corresponding regional one.

10. She would also like to know what steps were taken to ensure the participation of children in institutions that were not dependent on the Ministry of Education, such as, for instance, institutions providing care. What mechanisms existed, if any, to ensure that children's views and complaints could be heard and addressed in matters that concerned them?

11. The age of sexual consent, at 14, was perhaps acceptable if it referred to relations between children of the same age, but she wished to know how children of that young age were protected from abuse and exploitation by older persons. In that connection, she inquired whether it was an offence in Austria to frequent a prostitute aged under 18. Some 26 per cent of the children currently being born in Austria were born out of wedlock and it would be interesting to know whether there was any connection between that high figure and the low age of sexual consent.

12. The European Parliament had recently urged the States members of the European Union to standardize the age of consent to homosexual relations and she wondered whether Austria, where that age was set at 14 for girls and 18 for boys, had taken any steps towards doing so. Setting a high age of consent for male homosexual relations was considered by some specialists to be injurious to the psychological development of boys.

13. Turning to the matter of non-discrimination, she said that the report of Austria referred to the equality of citizens but did not make it clear whether residents and inhabitants who were not citizens also enjoyed such rights.

14. Retarded girls were sometimes, it appeared, subjected to forced sterilization. Adults with disabilities could be obliged to undergo such a procedure only by an order of the court and the same protection should be extended to children.

15. The Committee would certainly like to know whether the Convention had been invoked in judicial or administrative proceedings in Austria. It would also like to know whether the views of children were genuinely heard in proceedings that concerned them and, more particularly, whether refugee children had a voice in the decisions regarding them.

16. Mrs. OUEDRAOGO said it would be useful to know how the delegation evaluated the current status of the Convention in its country. Was the Convention widely known? What was the view of children themselves with regard to the Convention? Could they put it to use to ensure their rights?

17. Since the Austrian Constitution referred to only some of the forms of discrimination set out in article 2 of the Convention, she would like to know by what means the Government ensured that persons would be protected from discrimination on the basis of race, colour, language, political or other opinion, national, social or ethnic origin, disability, or any other factor. Furthermore, she wondered whether the relevant constitutional provision applied to foreign residents in irregular situations and whether protection agencies provided assistance to both Austrian and non-Austrian children, including stateless children and unaccompanied refugee children.

18. Despite the various steps that had been taken to reform legal provisions that discriminated against children born out of wedlock, the term "illegitimate child" was to be found in the report. She wondered whether that term was still in general use in legal documents. If so, the Government should consider eliminating its use so as to avoid stigmatizing such children, both socially and legally.

19. Recalling that the Committee on Economic, Social and Cultural Rights had expressed concern regarding the remuneration of women in the Austrian private sector and regarding the limits placed on the number of foreigners authorized to work in Austria, she asked what steps, if any, the Government had taken to address those problems.

20. It would be useful to know whether any of the Austrian Government publications for children referred to provisions of the Convention and whether the "media education", referred to in the report was obligatory in Austrian schools.

21. She inquired what measures, if any, had been envisaged to protect a child's right to privacy - and in particular to maintain secrecy of correspondence - in cases where parents refused to acknowledge that right.

22. Lastly, since Austrian mothers had the right not to disclose the name of the fathers of their children, she would like to know by what means a child's right to know the identity of his or her father was guaranteed.

23. Mr. KOLOSOV said that it was essential to eliminate the term "illegitimate child" from all documents, since the word "illegitimate" meant "outside the scope of rights", or "not a subject of rights". The Convention specifically prohibited discrimination on the basis of origin: a child must not be blamed for the marital status of his or her parents.

24. Members of the Committee had mentioned the need to provide translations of the Convention for members of minority communities who spoke other languages. Translations of the Convention into many of those languages, including Czech, Hungarian, Slovenian and Slovakian, already existed, however.

25. Although Austria had established an ombudsman system for children and adolescents, it apparently depended on the Federal Ministry of the Environment, Youth and Family. To be effective, however, the ombudsman had to be wholly independent and empowered to express his views and initiate legislation.

26. Although the Governments of all States parties to the Convention asserted that the children in their countries were aware of the existence of the Convention, he had yet to meet a child, in his frequent travels, who expressed such awareness. The Governments should thus redouble efforts to inform children of their rights.

27. Lastly, he would welcome more information concerning the situation of refugee children in Austria.

28. Mrs. OUEDRAOGO, referring to the mechanism for coordination and implementation of the Convention, said that Austria's written reply had given a fragmented view of the various actions undertaken at the State, provincial and other levels. She wished to know what procedure would be used to establish a national plan based on those actions, so as to provide an overview of the efforts being made on behalf of children in Austria.

29. Mrs. PALME said that, while agreeing that it was rare for children under the age of 18 in Austria to perform voluntary or compulsory military service, as stated in paragraph 94 of the initial report, she would like to know whether there was any intention of removing the existing ambiguity as between 17 and 18 or simply of changing the minimum age itself.

30. Mr. KOLOSOV asked the delegation to give its own assessment - and, if possible, that of Austrian society as a whole - of the extent to which the quite positive child protection legislation was actually enforced in practice.

31. Mrs. KARP said that, in view of the fact that discriminatory inequalities could arise as a result of differences in the provision of services in the various sectors, she wondered whether the provision of child abuse protection, such as counselling and witness protection services, was equal throughout the country.

32. The difference between boys and girls regarding the legal age of marriage was also discriminatory and she wondered whether there were plans to harmonize it.

33. Since no age had been specified at which a child could seek medical counselling, she wondered whether there was any legislation under which children, especially adolescents, could seek specific medical treatment or counselling for drug abuse or other psychological problems without their parent's knowledge; whether doctors or counsellors were allowed to provide such treatment or advice, and whether the parents had any legal redress against the provision of such services.

34. She took issue with the use in the report of certain terms such as the "integration" of children with disabilities, which implied the need for such children to become like the rest of society, as opposed to the more modern term "inclusion", which implied, rather, that society catered to all people regardless of their differences. She asked whether any thought had been given not only to changing the vocabulary but also to promoting the ideas that underlay inclusion, especially with regard to education of the disabled.

35. The CHAIRPERSON said she was concerned about the legal age of sexual consent at 14 and its effect upon the protection of children from exploitation, especially in respect of pornography. On the subject of the capacity to perform legal acts, she inquired whether there was any age at which a child could lodge a complaint or seek redress before the courts without parental consent. Also, at a time when the stereotyping of occupations was universally denounced she would like to know whether girls were excluded from compulsory and voluntary military service and, if so, on what basis.

36. Mr. SIEDLER (Austria), replying to Mr. Fulci, said that while children were unfamiliar with the specific provisions of the Convention, they were certainly aware of their rights. While he could not remember precisely when he himself had learned of the existence of the Convention, he had certainly discovered at quite a tender age that there were rights to which he was entitled.

37. His presence on the delegation was the result of his membership of an elite children's group in one of the Länder in Austria, in which he held responsibility for international affairs. In that capacity, he had been working with Ms. Kisser, who had invited him to accompany her to the current session of the Committee as a representative of the children of Austria.

38. Mr. SCHÜTZ (Austria), replying to Mrs. Karp's question concerning the European Convention on the Exercise of Children's Rights, said that the Convention in question neither regulated substantive rights nor created new ones, nor did it contradict or overlap with the United Nations Convention on the Rights of the Child, the Council of Europe having taken the view that it would be inappropriate to grant rights without any effective means of enforcing them.

39. The Family Law Committee, taking article 4 of the Convention on the Rights of the Child as its starting point, had concluded that it would be more useful to seek an improved implementation mechanism through the Council of Europe rather than on a national basis. The purpose of the European Convention was thus to grant children additional procedural rights so as to enable them to exercise the rights they already enjoyed under the Convention on the Rights of the Child, especially with regard to custody and access.

40. The Family Law Committee's original idea of a precise implementation of children's procedural rights had met with considerable opposition, making it necessary for the new Convention to contain several cross-references to national legislation. Those very weaknesses and uncertainties had probably accounted for its failure to receive the requisite number of ratifications despite the fact that it had been open for signature for over two years.

41. The language used in the English translation of the Austrian initial report was sometimes imprecise, a case in point being the use of the discriminatory term "illegitimate" instead of "out-of-wedlock", the term invariably used in Austria.

42. There was no discrimination between children born in or out of wedlock, both categories enjoying the same substantive rights, including full equality

under Austria's inheritance laws. It was to be expected that, following the appearance of the new draft on the legal status of children, on which the Family Law Committee of the Council of Europe was currently engaged and from which all references to birth in wedlock and out of wedlock would be deleted, the member States would follow suit.

43. The high percentage of children born out of wedlock was due to changing realities and attitudes in a world - especially in Europe - where many couples lived together without marrying. It so happened that, in Austria, many such couples did marry after their children were born. The phenomenon was being studied by the Council of Europe and a Family Law Conference was to be held at the Hague in March 1999 to consider the legal aspects of registered partnerships.

44. Mr. STORMANN (Austria) said that it was not a recent trend in Austria for large numbers of children to be born out of wedlock. In some parts of the country, such as the Vorarl mountains, such children amounted to 50 per cent of all births. The reason was that, traditionally, a person did not marry until the family farm had been turned over to him by his parents. In any case, there was no distinction under civil law between children born in and out of wedlock. Under the law, paternity could even be acknowledged in advance of birth, giving the child in question a legal father although the parents were not married.

45. As to the age of sexual consent, it was 14 years according to the report but there had been some new developments in criminal law which set the new age of protection at 12 years. There were legal provisions to protect children from sexual exploitation, and the Criminal Court could intervene in cases of the abuse of authority.

46. Under Austrian law, the mother's right not to reveal the name of her child's father took precedence over the child's right to have a father. The case was entirely different in the case of artificial insemination, where the child had a personal right to know who his natural father was, even if his legal father was the husband or partner with whom his mother was living.

47. Concerning respect for the views of the child, on questions of education it was the obligation of the Family Court to ask the child for his opinion. The Court was obliged to do so personally in the case of children over 10 years of age; under that age, the Court could ask for the assistance of the Youth Welfare Authority or of experts. A similar provision was contained in the Youth Welfare Act to the effect that, if a child was placed by the Authority without the Court's intervention but with the consent of the parents, it was the duty of the Authority to seek the child's opinion. Any placement of a child, whether it involved the Court or the Authority, therefore required the child's opinion to be taken into account.

48. Replying to questions on medical treatment, he said that current Austrian law provided only for the possibility of children under 18 years obtaining medical advice from a doctor, without the consent of their parents or legal representatives, whereas any medical treatment did require such consent. None of the current legal provisions dealt explicitly with the

rights of the child, how parents should be involved in their children's medical treatment and whether children had the right to prevent their parents from being involved.

49. In general, the laws on medical treatment followed the principles of legal representation under civil law, but those provisions were manifestly insufficient and new provisions were to be proposed, prohibiting all medical treatment of a minor having the ability of discernment without his consent. As for the involvement of parents, some psychologists believed they should be excluded in cases where it would be dangerous for the child to discuss treatment with them, especially where sexual consent was an issue. On the other hand, there were those who argued that, under the European Convention on Human Rights, as interpreted by the European Court of Human Rights, the parents had to be involved. It was a very tricky matter.

50. For its part, the federal Ministry of Justice believed that medical treatment of a child with the capacity of discernment should depend on his consent alone, and not require any involvement by the parents. The draft legislation was to be sent for comment to the various government departments and non-governmental organizations (NGOs) dealing with children's interests and those comments would, it was confidently expected, support the Ministry's intention to assert the right of the child to decide on his own behalf.

51. As to what happened when a parent or other person with authority over a child harmed his welfare, the situation under the existing law was that anyone who was aware of such events was bound to inform the Family Court, whose duty it was to check on what had happened to the child. If the Court concluded that the child's welfare was in danger, it had to take adequate action to protect him. The new legislation would allow children over the age of 14 to file such claims on their own behalf, without the need for legal representation.

52. The procedure for access to the Family Court was quite easy. It was possible to meet a judge so as to receive legal advice. Judges helped to formulate claims, but clients were still free to choose a lawyer. That system, which brought judges close to the people, was very appropriate for children, who could speak to them personally. The problem still remained, however, of the representation of the child: if a second person were involved, he might act not in the child's interest but in what he believed that interest to be. It was therefore deemed better to change the provisions on family court procedures so as to help children act for themselves. Important new legislation was thus being drafted which would impose on the court the duty to provide minors with information to help them file their own claims and allow the child remedies up to the Supreme Court level. The target date for entry into force of the legislation was 1 January 2000.

53. Current provisions on the age of marriage, allowing women to marry much earlier than men, were being amended, whereby the age for men would be lowered to 18 and that for women to 16. Psychologists said there was no reason to change the principle that there was a difference between the sexes, as it was quite clear that females matured earlier than males. When, in 1984, the

Ministry of Justice had last tried to eliminate the age difference for marriage, there had been a nationwide uproar, so it would not be proposed again.

54. In any case, statistics showed that there were differences between the usual marriage age of men and women within the population. There were parts of the country where girls married very young, and yet the divorce rate was much lower than in other parts of the country, so it could not be concluded that early marriages were doomed.

55. Ms. JELLINEK (Austria), replying to a question about unaccompanied juvenile asylum-seekers, said that, under article 39 of the Asylum Act, the Office of the United Nations High Commissioner for Refugees (UNHCR) was informed of every request for asylum made in Austria, with special provisions applying to minor aliens. Minors with legal capacity and whose interests could not be safeguarded by their legal guardians could file requests themselves. An unaccompanied juvenile asylum-seeker could be interviewed only in the presence of his legal representative or a representative of the youth welfare office of the Land in which he was applying for asylum. Such persons were also entitled to housing and pocket money under the Aliens' Support Act and, if none were provided, they must be taken care of by the Länder social welfare institutions; they were not put out on the street.

56. In answer to a question on stateless minors, she said the Austrian Statelessness Act provided that children found on their own who were under six months of age were automatically granted citizenship. Unaccompanied minors or refugees could apply for citizenship after four years' residence. Persons born in Austria who would otherwise be stateless were granted citizenship under article 40 of the Act, and citizenship could be extended from parents to children if the parents applied therefor. Under the amended regulation that had come into force on 1 January 1999, children over the age of 14 could make their own applications. If a child's legal representative was not in favour of the application but it was deemed to be for the minor's benefit, the decision could be made by the Youth Welfare Authority.

57. Individuals who believed they had been discriminated against by the police could file complaints under the Police Authority Rules and apply first to the independent Administrative Tribunal, which would decide whether the rules had been violated, and afterwards to the Administrative Court.

58. Mr. FILLER (Austria), replying to questions about children's knowledge of the Convention, said some initiatives had been taken to make it known to large groups of people. There had been a postal stamp competition for students in 1992, which in theory made every citizen aware of children's rights. As children's rights were also embodied in the Austrian legal system, it was logical for them to know that their rights included those enshrined in the Convention.

59. In 1999, the Ministry of Education, together with the Ministry of the Environment, Youth and Family and the United Nations Children's Fund (UNICEF), was to initiate a monitoring system in schools, with pupils being asked

whether they were familiar with their rights, which rights they knew, where they felt under-represented, and which of their rights they felt were being violated. The results of that study would be presented in September 1999.

60. As for general initiatives to promote knowledge of the Convention, it was intended to make the text of the instrument, the initial report of Austria and the Committee's observations, as well as the second periodic report due in September 1999, available to a worldwide public, through the Internet.

61. Regarding budgetary incentives to harmonize the situation of children throughout the country, the issue had already been taken care of at the federal level, with the annual allocation of some Sw F 100 million for better provision of child-care centres nationwide, and considerable funds for running child-protection centres, which were also funded at the Land and municipal levels.

62. The prostitution of minors was forbidden by State regulations throughout the country. The Ministry of the Environment, Youth and Family had commissioned a study on the conditions leading youth into prostitution; that study, which had been completed, would shortly be made available to the public.

63. As to the extent to which the Convention was known to the courts, there was one case in which the Supreme Court had rendered a decision on the basis of the Convention. Moreover, since it was a part of the Austrian legal system, the Convention had led to a new interpretation of the existing Austrian regulation on visitation rights, whereby it was concluded that not only did parents have right of access but the child had also the right to personal contact with a non-resident parent. That case demonstrated that the Convention was quite widely known among legal practitioners and to the courts.

64. A member of the Committee had asked whether there was not some disharmonization of regulations nationwide as a result of the federal system. The harmonization of regulations was the role of the Länder ombudsmen and not of the federal State.

65. A working group was considering the question of the age of sexual consent. According to a study on youth prostitution, the criminal law was not enough to prevent young persons from engaging in prostitution; a series of adequate measures must be adopted, and services provided to ensure that young persons were given other opportunities.

66. Although translations of the Convention into some of the languages of the national minorities already existed, that resolved only part of the problem since some groups, while regarding themselves as belonging to a particular minority, seemed to believe that their language was different from that spoken in a neighbouring country. Consequently, if the local minority group was not satisfied by the official translation, it was necessary to arrange for a translation into its own everyday language.

67. Ms. KISSER (Austria) said that people no longer shared the earlier generations' prejudices against children born out of wedlock. The fact that such situations had become more prevalent in Austria was perhaps to be

attributed to the increasing independence of women. A number of "educational principles" had been introduced into school curricula, including sex education, the emancipation of women, and civic education in the concepts of rights and duties. While young people in Austria might not be fully aware of the Convention as such, they lived its principles daily.

68. The word "integration" had been introduced, after extensive discussion, to replace "assimilation" with a view to conveying a sense of the "inclusion" of many different peoples in Austrian society, and the tremendous asset that it represented. In connection with discrimination against foreign children, she had been disappointed by the reaction of the European Commission to a request that Bosnian child refugees in Austria should be permitted to participate in European Union youth programmes.

69. The CHAIRPERSON invited the members of the Committee to ask questions on the section of the list of issues entitled "Family environment and alternative care", together with the issues raised in the letter received by the Committee from Jan Rewers McMillan.

70. Mr. FULCI commended the pamphlet that had been published in Austria on the subject of the Convention and asked how many copies had been produced and how they had been distributed. It was unclear, however, to what extent young people in Austria were really aware of the existence of the Convention. Paragraph 253 of the initial report stated that the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, to which Austria was a party, were "very effective instruments in combating illegal transfer and non-return of children". That was most reassuring, since it was important that children should be spared any additional stress resulting from cumbersome international litigation in the event of a family break-up.

71. However, the letter received from the Michigan attorney, Jan Rewers McMillan, in connection with the non-return from Austria of a child abducted from Michigan, alleged that Austria was failing to comply with articles 9, 10, 11, 14 and 18 of the Convention on the Rights of the Child. He asked whether it was true, as alleged, that the Austrian legal system provided no effective enforcement mechanism to assure compliance with court orders, with the result that a non-custodial parent's rights were completely unimposable, thereby infringing the provision contained in article 9 of the Convention that a child should maintain direct contact with both parents on a regular basis.

72. He was also concerned about the statement that the legal system in Austria directly linked the payment of child support with a parent's right to have contact with a child and wondered whether a destitute parent would consequently be deprived of access. He hoped that the delegation would respond to those and other disturbing allegations made in the letter.

73. Mrs. KARP asked for details on how children were empowered to participate in the justice system, the educational system and other spheres. With respect to the resolution of the Council of Ministers of the European Union which had been brought to the attention of the Committee, she wished to

know whether the member States were required to allocate funding to provide children with the skills required for participation and, if so, how that requirement was reflected in the budget estimates.

74. In connection with an earlier reply by the delegation, she was concerned that the best interests of the child, who had a right to an identity and to contact with both parents, were not served by the decision that a mother's right to privacy prevailed in the event of a conflict with a child's wish to know the identity of his or her father.

75. In Israel, her own country, much discussion had surrounded the issue of whether children should have access to medical treatment without parental consent. A possible solution might be to set up State establishments in which young people could receive counselling and, where appropriate, treatment without parental consent but with adult support and in safety; it was certainly in the best interests of young people that they should have access to treatment.

76. The question of the age of marriage was not merely one of biological maturity but also involved such questions as personal development and educational achievement, for which reason it would be in the best interests of young women that the age of marriage should be raised. The parents of mentally handicapped children should be given qualified and independent support in reaching a decision regarding the sterilization of such children. She would like to know who was responsible for reviewing the situation of children in care, how often such a review took place and how the use of force or brutality was monitored and prevented in juvenile justice institutions.

77. She would like to be informed why Austria was not a party to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which accorded closely with Austrian legislation.

78. Mrs. PALME asked whether the discussions mentioned by Mr. Filler regarding the age of sexual consent included homosexual relations. She suggested that the reason that the divorce rate was not higher among women who had married at an early age might simply be that they had had no opportunity to acquire sufficient qualifications or personal independence to permit them to end an unsuccessful marriage.

79. Mrs. OUEDRAOGO, having noted that her question regarding the unequal pay received by women in the private sector had not been answered, urged the Austrian Government to raise the age of marriage so as to ensure that girls were able to complete their normal development. She asked whether new legislation had resolved the problem of the implications for children of the withdrawal of a parent's residence permit. She would also like to know how the telephone helplines for children had been received - suggesting that they might be made free of charge - and how successful the schools for educating parents against violence had proved to be.

The meeting rose at 6 p.m.